

### **REMARKS**

Claims 3-11, 15 and 30 are pending. Claims 12-14 and 16-29 have been canceled.

### **Duplicate Claims**

Claim 15 is objected to for being a substantial duplicate of claim 16. In response, Applicants have canceled claim 15.

Claims 17-19 and 23-25 are each individually objected to for being a substantial duplicate of claim 3. In response, Applicants have canceled claims 17-19 and 23-25.

### **Claim Rejections under 35 U.S.C. 112**

Claims 17-28 are rejected under 35 U.S.C. 112, 1<sup>st</sup> paragraph for lacking enablement. Applicants respectfully traverse the rejection.

Applicants truly believe that claims 17-28 fully comply with the requirements of 35 U.S.C. 112, first paragraph. However, in order to advance prosecution, Applicants have canceled claims 17-28. Accordingly, this rejection is rendered moot.

### **Double Patenting**

Claims 3-11, 15-19 and 23-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-23 and 39 of copending Application No. 10/250,693 (hereinafter "the '693 Application").

In response, Applicants co-file herewith a Terminal Disclaimer over the '693 Application.

In legal principle, the filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of obviousness-type double patenting, and does not raise a presumption on the merits of the rejection. It is improper to view the simple expedient of "obviation" as an admission or acquiescence on the merits. *Ortho Pharmaceutical Corp. v. Smith*, 22 USPQ2d 1119, 1124 (Fed. Cir. 1992) citing *Quad Envtl. Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991).

Based on the foregoing, the obviousness-type double patenting rejection is rendered moot.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq. (Reg. No. 43,575) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

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Respectfully submitted,

By 

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